

Date of decision: 05/02/96

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

1. Whether Reporters of Local Papers may be allowed to see the judgements? No.

2. To be referred to the Reporter or not? No.

3. Whether Their Lordships wish to see the fair copy of the judgement? No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge? No.

SURAT DISTRICT PANCHAYAT & 2

vs

YUSUF KASAM KBODI &2

Appearance: MR SV PARMAR, for Petitioners.

None appeared.

Coram : MR.JUSTICE N.N.MATHUR

(5-2-1996)

ORAL JUDGEMENT

By this Special Civil Application the petitioners have challenged legality and validity of the order dated 27-10-1988 made by the Additional Development Commissioner, Gujarat State, whereby the order dated 7-9-88 passed by the President, Surat District Panchayat, has been quashed and set aside.

2. The facts giving rise to the present Special Civil Application are that the State Government under the provisions of Section 38 of the Bombay Land Revenue Code, 1879(hereinafter referred to as the Code) transferred approximately 200 Acres of land for free pasturage for

village cattle. The Sarpanch of Hathuran Gram Panchayat under the Resolution dated 30-6-1988 put the grass grown on the said "gauchar" land to auction. This was objected to. As there was apprehension of breach of peace the said Resolution dated 30-6-1988 was put under suspension on 17-7-1988 in exercise of power under Section 71((1)(b) of the Gujarat Panchayats Act, 1961. The said order was challenged before the Additional Development Commissioner by Yusuf Kasam Bodi. The Additional Development Commissioner quashed and set aside the orders dated 7-7-1988 and 7-9-1988.

3. None appears for the petitioners and so as for the respondents. The documents are in Gujarati and as such I am handicapped in reading them. I have waited for the learned Advocate for the petitioner on earlier dates as well today. I have no option but to proceed with the matter as it is.

4. On plain reading of Sections 38 and 39 of the Code, it clearly appears that the State Government may assign the land for grazing for free pasturage land. In the present case, the land was assigned by the Collector for free pasturage for cattle of the village. The grass grown on this land could not be permitted to be put to auction by the Sarpanch.

5. In view of the aforesaid, the act of the Sarpanch putting the grass to auction is apparently illegal.

6. In view of the aforesaid, this Special Civil Application is allowed and the order of the Collector dated 3-10-1988 is quashed and set aside. Rule is made absolute to the aforesaid extent. There shall be no order as to cost.